

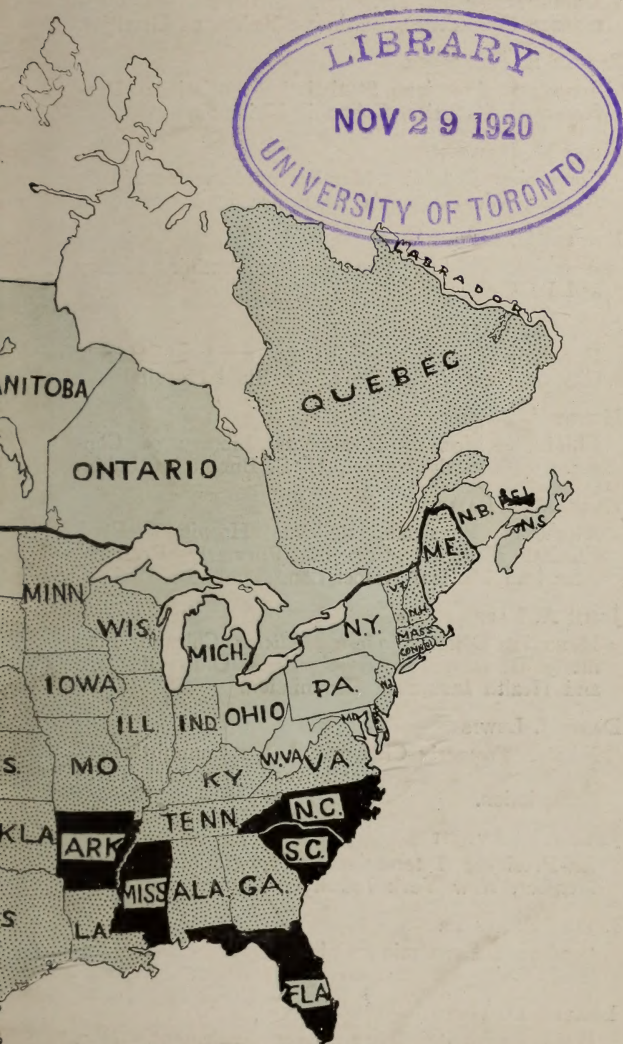
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Standards for Workmen's Compensation Laws

[Ed. 7]



AMERICAN ASSOCIATION FOR LABOR
LEGISLATION

131 East 23rd Street, New York City

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ANNOUNCEMENT

The seventh annual edition of this pamphlet once more records substantial gains in the field of workmen's compensation. Enactment in 1920 of a new law in Georgia is scarcely more important than the numerous improvements made in existing statutes. Public interest is now focused upon the new federal law, already supplemented by action in half the states, to rehabilitate industrial cripples.

During the first years of American agitation for the compensation principle, the Association for Labor Legislation believed it could best serve the cause by collecting and disseminating information. It analyzed and published up-to-date reviews of legislation. It assisted in the creation of official commissions and helped to bring them together in national meetings. It organized the first American conferences on Occupational Diseases and on Social Insurance. It assisted with information, urged well-tested improvements, and pointed out obvious shortcomings in projected bills.

Since April, 1911, when the first general state compensation law to go into effect and stay in effect was enacted, the movement has spread from state to state, and the federal government now protects its million civilian employees by a model measure drafted by this Association and embodying substantially the standards here set forth.

In extending the legislation to the five remaining states and in perfecting the laws which already exist, it is hoped that these standards may help to point the way toward that desirable uniformity in legislation which shall deal liberally with the injured workman and his dependents, fairly with the employer, and justly with the state.

JOHN B. ANDREWS, *Secretary*,

American Association for Labor Legislation.

November 1, 1920.

STANDARDS FOR WORKMEN'S COMPENSATION LAWS

Recommended by the
AMERICAN ASSOCIATION FOR LABOR LEGISLATION

In the opinion of the American Association for Labor Legislation the following features are essential to satisfactory workmen's compensation laws:

I. Scale of Compensation. Assuming machinery to insure the prompt payment of the compensation required by law, the scale of payments is the most important feature of the system. The strongest argument for compensation to all injured workmen or to their dependents is that shortened lives and maimed limbs due to industrial injuries are just as much expenses of production, which should be met by those conducting industry for their own profit, as are used-up raw materials or worn-out tools and machinery. The whole expense of losses to capital is necessarily borne by the employer. The whole expense of the personal losses due to injuries is the loss in wages sustained and the expenses for medical care during incapacity. The only logical reason for not imposing, through the employers, this entire expense on every industry that occasions it, is that injured workers must not be deprived of a motive for returning to work and to independent self-support as soon as they are able to do so. The compensation act, therefore, should provide for the expense of all necessary medical attendance and for the payment of such a proportion of wages to the victim of the injury during his incapacity, or to his dependents if he be killed, as will provide for the resulting needs and yet not encourage malingering. The following scale is believed to conform to these requirements and to be the lowest that should be inserted in any compensation law.

1. Medical Attendance. Aside from humanitarian considerations the employer should, in the interest of economy and efficiency, be required to furnish all nec-

essary medical, surgical and hospital services and supplies as determined by the Accident Board.

All of the acts except those of Alaska, Arizona and New Hampshire provide for medical attendance. In California, Connecticut, Hawaii, Kentucky, Maryland, Nebraska, North Dakota, Ohio, Oregon, Porto Rico, West Virginia and Wisconsin, and under the federal law for government employees, the period during which such services and supplies are to be furnished is left to the discretion of the Accident Board. In California, Colorado, Connecticut, Idaho, Indiana, Kentucky, Massachusetts, Michigan, Nevada, New York, North Dakota, Ohio, Oklahoma, Porto Rico, Rhode Island, Texas, Washington and Wisconsin, and under the federal law, this board controls the amount of such service and supplies. In Maine, Nebraska and Pennsylvania the amount payable may be increased in the discretion of the board in case a major surgical operation is required.

2. Waiting Period. No compensation should be paid for a definite period—to be not less than three nor more than seven days—at the beginning of disability.

In California, Connecticut, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin, and under the federal law, the waiting period is as here recommended. In Oregon and Porto Rico there is no waiting period.

3. Compensation for Total Disability. The disabled workman should receive during disability $66\frac{2}{3}$ per cent of wages; compensation not to be more than \$25 or less than \$8 a week, unless his wages are less than \$8 a week, in which case compensation should be the full amount of wages. If he is a minor, he should, after reaching twenty-one, receive $66\frac{2}{3}$ per cent of the wages of able-bodied men in the occupation group to which he belonged.

All of the acts except those of Alaska, Oregon, Washington and Wyoming base the compensation on a percentage of wages, rather than on a flat rate regardless of the wages.

The percentage of wages here recommended is the same as in Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota and Ohio, and in the federal law. California, Illinois (sliding scale), Kentucky and Wisconsin provide 65

per cent, Alabama (sliding scale), Hawaii, Iowa, Kansas, Louisiana, Maine, Michigan, Nevada, Pennsylvania, Texas and Utah provide 60 per cent, while Idaho, Indiana and South Dakota provide 55 per cent.

In California, Colorado, Idaho, Illinois, Missouri, Montana, Nevada, New York, Ohio, South Dakota, Utah and West Virginia compensation for permanent total disability is allowed for life, and in Arizona, Maryland, Nebraska, North Dakota, Oregon and Washington, and under the federal law, compensation for total disability is payable during the continuance of the disability.

The fact that the injured employee is a minor is recognized in fixing compensation in California, Colorado, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New York, North Dakota, Ohio, Oklahoma, Texas, Utah, and Wisconsin, and under the federal law.

4. Compensation for Partial Disability. The workman who is only partially disabled should receive a percentage of his wages proportioned to the degree of physical disability (taking into account age and occupation), and subject to readjustment only on account of changes in extent of disability; compensation not to exceed \$25 a week, with provisions for minors, and for workmen earning less than \$8, similar to those in the case of total disability.

In case of a second injury Minnesota, New York, Ohio, Oregon, Utah and Wisconsin pay out of a special fund any compensation in excess of that for which the second injury by itself would make the employer liable.

5. Compensation for Death.

(1) **Funeral Expenses.** The employer should be required to pay a sum not exceeding \$150 for funeral expenses, in addition to any other compensation.

All the laws except those of Alaska, Arizona, Illinois, Kansas, Maine, Maryland (in case decedent's estate is large enough to pay such expense), Michigan, New Hampshire, Oklahoma (which cannot constitutionally compensate for death), Porto Rico, Rhode Island, South Dakota, Texas and Virginia provide funeral expenses in all cases of death whether or not there are dependents. The maximum limit is \$200 in Maine, Massachusetts, Michigan and Rhode Island, while Alaska, Illinois, Kansas, Ohio, South Dakota and Utah allow \$150.

(2) **Compensation for Widow.** If living with the decedent at the time of his death, or if dependent, the widow should be granted 35 per cent of his wages until her death or remarriage, with a lump sum on remarriage equal to two years' compensation.

The method of compensation for cases of death recommended in this and succeeding paragraphs is substantially the same as in Alabama, Delaware, Hawaii, Idaho, Louisiana, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Tennessee and Vermont, and under the federal law. The provision for a lump sum payment to the widow on remarriage is adopted in Colorado, Maryland, Minnesota, Nevada, New York, North Dakota, Oregon, Pennsylvania, Washington and West Virginia.

(3) **Compensation for Widower.** If living with the decedent at the time of her death and dependent upon her support, the widower should receive 35 per cent of her wages, or a proportionate amount if his dependency is only partial, to be paid until his death or remarriage.

(4) **Compensation for Widow or Widower and Children.** In addition to the compensation provided for the widow and widower, 15 per cent should be allowed for each child under eighteen, not to exceed a total of $66\frac{2}{3}$ per cent for the widow or widower and children. Compensation on account of a child should cease when it dies, marries or reaches the age of eighteen.

(5) **Compensation to Children if There Be No Widow or Widower.** In case children are left without any surviving parent 25 per cent should be paid for one child under eighteen, and 15 per cent for each additional such child, to be divided among such children share and share alike, not exceeding a total of $66\frac{2}{3}$ per cent. Compensation on account of any such child should cease when it dies, marries or reaches the age of eighteen.

(6) **Compensation to Parents, Brothers, Sisters, Grandchildren and Grandparents if Dependent.** For such classes of dependents 25 per cent

should be paid for one wholly dependent, and 15 per cent additional for each additional person wholly dependent, divided among such wholly dependent persons share and share alike, and a proportionate amount (to be determined by the Accident Board) if dependency is only partial, to be divided among the persons wholly or partially dependent according to the degree of dependency as determined by the Accident Board. These percentages should be paid in cases where there is no widow, widower, or child. In other cases members of this class should receive as much of these percentages as, when added to the total percentage payable to the widow or widower or child, will not exceed a total of 66-2/3 per cent. Compensation to members of this class should be paid only during dependency.

(7) **Compensation for Alien Non-Resident Dependents.** Aliens should be placed on the same footing as other dependents.

In Hawaii, New Hampshire, New Jersey and New Mexico alone are alien non-resident dependents expressly excluded from compensation. In Iowa, Michigan, Minnesota, Nevada, North Dakota, Texas, Utah, and Wisconsin and, in part, in California, Colorado, Connecticut, Delaware, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Montana, Nebraska, New York, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, West Virginia, Wisconsin and Wyoming, they are expressly included. In other States they are apparently included in the absence of any reference to them.

(8) **Maximum and Minimum Compensation for Death.** The wages on which death compensation is based should be taken to be not more than \$37.50 per week nor less than \$12 per week; but the total amount of the weekly compensation should not be more than the actual wages.

6. Commutation of Periodical Compensation Payments. If the beneficiary is or is about to become a non-resident of the United States, or if the monthly payments to the beneficiary are less than \$5 a month, or if the Accident Board determines that it would be to the best interests of the beneficiary, the employer

should be permitted to discharge his liability for future payments by the immediate payment of a lump sum equal to the present value of all the future payments computed at 4 per cent true discount, compounded annually. For this purpose the expectancy of life should be determined according to a suitable mortality table, and the probability of the happening of any contingency such as marriage or the termination of disability, affecting the amount or duration of the compensation, should be disregarded.

Substantially similar provisions are found in nearly all States and in the federal law.

II. Employments to Be Included. It is believed that sufficient progress has now been made in public education on the problem, and in the development of efficient and economical machinery for insuring the employer against his compensation liability, to justify the inclusion in the system of all employments. The only exception which should be made is of casual employees in the service of employers who have only such employees and who, therefore, cannot fairly be required to carry compensation insurance policies. Such policies, on payment of a small additional premium, are now drawn so as to embrace casual as well as regular employees. No serious burden is, therefore, entailed on employers, even of domestic servants, in making them liable to pay compensation to casual employees.

The principle of limiting the act to so-called "hazardous employments" is adopted only in Alaska, Arizona, Illinois, Kansas, Louisiana, Maryland, Montana, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Washington and Wyoming, and in most of these States those in other employments may elect to come under compensation. The tendency is to regard all employments hazardous.

Farm labor and domestic service are excepted from the operation of the act in nearly all the States, either expressly or indirectly.

In Alaska, Delaware, Georgia, Kansas, Kentucky, New Mexico, Missouri, Ohio, Oklahoma, Porto Rico, Tennessee, Texas, Utah, Virginia and Wyoming the operation of the act is limited to employers employing more than a certain number of employees, ranging from two to ten; and in Alabama, Colorado, Connecticut, Maine, Rhode Island, Vermont and Wisconsin employers of less than a certain number are not subjected to the abrogation of the defenses in case they refuse to elect compensation. In all the other States there is no distinction as to the number of employees.

In Iowa, Maryland, New Hampshire and Washington the employees to be included are limited to persons engaged in the hazardous part of the employment. In all other States persons engaged in clerical work as well as those engaged in manual work are included.

Casual employees are included in Alaska, Kansas, Louisiana, Michigan, New York and Oklahoma, and under the federal law.

III. Injuries to Be Included. Compensation should be provided for all personal injuries in the course of employment, and death resulting therefrom within six years, but no compensation should be allowed where the injury is occasioned by the wilful intention of the employee to bring about the injury or death of himself or of another. The act should embrace occupational diseases which, when contracted in the course of employment, should be considered personal injuries for which compensation is payable.

The principle of limiting the time within which death must occur in order to form a basis for compensation is found in Alabama, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kentucky, Louisiana, Maryland, Nebraska, New Mexico, North Dakota, Ohio, Pennsylvania, Porto Rico, Utah, Vermont, Virginia and West Virginia, and in the federal law.

The principle of excepting injuries caused by the wilful intention of the employee is found in all States except Arizona, Connecticut, Illinois, Massachusetts, Michigan, Montana, Nebraska, New Hampshire and Wyoming.

Occupational diseases are included as personal injuries entitling the employee to compensation in California, Connecticut, Hawaii, Massachusetts, New York and Wisconsin, and in the federal law.

IV. Other Remedies Than Those Provided by the Compensation Act. One of the weightiest arguments against the outworn system of employers' liability is that it causes vast sums to be frittered away in law suits that should be used in caring for the victims of accidents. To avoid this waste the compensation provided by the act should be THE EXCLUSIVE REMEDY. If the employer has been guilty of personal negligence, even going to the point of violating a safety statute, his punishment should be through a special action prosecuted by the State factory inspection bureau.

This is the law in Alaska, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana,

Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Wisconsin and Wyoming, except that in a few of these States if the employer fails to insure the payment of compensation the injured employee has the option of claiming compensation or of suing at law with the defenses removed.

V. Security for the Payment of Compensation Awards. The supreme tests of a compensation system are, first, the incentive provided for reducing accidents to the utmost, and, second, the promptness and certainty with which compensation claims are met. The strongest incentive toward prevention results from imposing the whole expense of compensation upon the employer. The irregularity and uncertainty of accidents, however, make this policy inexpedient for small employers with limited financial resources. Security can only be attained through some system of insurance. Employers should, therefore, be required to insure their compensation liability.

Alabama, Alaska, Arizona, Kansas and Minnesota are the only States which do not require in some form or other the employer to secure the payment of compensation either by insurance or by the giving of a bond.

In accordance with the plans of insurance at present provided for, employers may either:

1. Maintain their own insurance fund subject to the approval of the Accident Board or other administrative authority;

Massachusetts, Nevada, North Dakota, Oregon, Porto Rico, Texas, Washington and Wyoming do not permit employers to carry their own insurance.

2. Insure in a Mutual Association authorized to insure compensation liability;

Insurance in a mutual association is permitted in most States, including California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia and Wisconsin.

3. Insure in a State Insurance Fund managed by the Accident Board upon the same principles and subject to the

same general requirements as those governing Mutual Insurance Associations;

State insurance is authorized in California, Colorado, Idaho, Maryland, Michigan, Montana, Nevada, New York, North Dakota, Ohio, Oregon, Pennsylvania, Porto Rico, Utah, Washington, West Virginia and Wyoming.

4. Insure in a commercial company, such companies to be subjected to the most rigid regulation to guard against insolvency, to insure just settlement of claims, to prevent wasteful practices and exorbitant rates, and to eliminate unfair competitive methods.

Insurance in commercial companies is not allowed in Nevada, North Dakota, Ohio, Oregon, Porto Rico, Washington, West Virginia and Wyoming, and sentiment is rapidly developing in favor of such exclusion elsewhere.

VI. Organization of Accident Board.

It is essential to the successful operation of the compensation system that an Accident Board be created. This board should consist of three or five members appointed by the Governor with the consent of the Senate. The board should have power to employ necessary assistants. Its members should be required to devote their entire time to its work and should not be permitted to carry on any other business or profession for profit. The entire cost of administration of the Accident Board, including the administrative expenses of establishing the State Insurance Fund managed by the Accident Board, should be paid out of an appropriation made by the State.

Accident boards are provided in all of the States except Alabama, Alaska, Arizona, Kansas, Louisiana, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee and Wyoming.

VII. Procedure for Settlement of Compensation Claims.

Provision should be made for the determination of all claims for compensation, either by the Accident Board, or, if the number of claims be large, by one member of the board or an authorized deputy. A decision by a member or deputy should be conclusive, unless appeal therefrom is taken to the entire Accident Board within a specified time. The Accident Board's disposition of the case should be

final and conclusive unless appeal therefrom is taken within a specified time. Appeals from decrees of the Accident Board should not be allowed, except on questions of law, and should be carried direct to the highest court.

The procedure here recommended was adopted in New York by amendment of the law in 1919 after an investigation which showed frequent and large underpayments of compensation resulting from an earlier amendment permitting direct settlements.

VIII. Reports of Accidents. The bill should contain provisions similar to those of the Standard Accident Reporting Bill of the American Association for Labor Legislation, now in use for about half the industrial population of the country, requiring full and accurate reports of all industrial accidents as a basis for computation of future industrial accident rates and for future safety regulations to decrease or prevent accidents.

IX. Rehabilitation. Restored earning power is of more importance than distress relieved. The administrative board should therefore be authorized to encourage, cooperate with, or conduct enterprises for the re-education and rehabilitation of injured persons.

More than twenty states already make provision for aiding industrial cripples to secure re-training, re-education or re-employment.



The essential features of workmen's compensation law here outlined are urged on the basis of a careful study of the whole question and of the compensation legislation not only of other States but of European countries. As one of the functions of the Association for Labor Legislation is to promote the enactment of uniform labor laws, it earnestly recommends to the careful consideration of legislators and of those who are interested in social progress the country over, the foregoing just, reasonable and progressive workmen's compensation standards.

The American Association for Labor Legislation is a scientific society with headquarters at 131 East 23d Street, New York City. It is supported entirely by contributions from its three thousand members representing all groups in every state in the Union.

If you wish to be kept in touch with this expanding work you should **become a member.**

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Workmen's Compensation Map of the United States and Canadian Provinces



Can your State measure up to these standards?